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THE SOURCES OF AMERICAN FEDERALISM.

In applying the historical method to the study of the American political system it is not enough to trace the origin and growth of the various branches of the federal government. The origin of the forms of the federal government presents no great historical difficulties to one who has carefully studied the constitutional history of the early States and colonies. He finds that the central government of the United States, in its general structure and its various branches, is scarcely more than a reproduction on a higher plane of the governmental forms existing in the previous States, and more remotely in the early colonies.

It is not difficult, for example, to see that the offices of president and vice-president of the United States were modeled after the offices of the governor and deputy-governor, or as they were sometimes called the president and vice-president, of the previous States,—which in turn grew out of the offices of governor and deputy-governor of the early colony. One can also see that the bicameral system of the federal government, with its co-ordinate branches of Senate and

House of Representatives, was a continuation of the bicameral system already existing in the several States, with its similar co-ordinate branches, having similar names and similar relative functions; and that this bicameral system of the States had itself grown out of the distinction which primarily existed between the "assistants" and the "deputies" in the General Court of the colony, after the growth of representation.* And if one looks back still farther he finds that the typical structure of the early colony was simply a continuation of the structure already existing in the trading company, which in its typical form possessed identically the same organization as that of the typical colony—consisting in each case of a governor, a deputy-governor, a council of assistants, and a general court or assembly of freemen.† In short, the student of American institutions finds that the federal government, in its general structure and various branches, was developed from organic forms which had had a continuous existence in the trading companies, in the early colonies, and in the original States of the Union.

But while we may thus explain historically the structural elements of the federal government of the United States by bringing them under the law of continuity, we have not thereby explained that which is most distinctive and characteristic of the American political system. The transition by which the American States became the United States of America, did not consist merely in the formation of a new central government, based upon the previous State governments. It certainly included this, but it was something more. It was pre-eminently the integration of the existing State communities into a larger political society in which the States became organized as integral and constituent elements, with their essential structure and functions unchanged, except so far as was necessary to effect a true organic union between the States themselves. It was, perhaps, the most

* Cf. "First State Constitutions," *ANNALS*, Vol. iv, p. 201, September, 1893.

† Cf. "Genesis of a Written Constitution," *ANNALS*, Vol. i. p. 529, April, 1891.

conspicuous example in all history of the formation of a great state in accordance with what may be regarded as the normal law of political evolution, that is, the integration of a new political organism, by preserving the structure and functions of the parts of which it is composed, and by maintaining at the same time an organic relationship between those parts and the whole body-politic.

The chief difficulty in explaining the genesis of the American federal system, arises from the fact that, while federalism seems to represent a normal process of political growth, there was, at the time the Federal Union was formed, no state or political system in the Old World from which the idea of such a union can properly be said to have been derived. The tendency toward the formation of large states, which had shown itself in the previous periods of the world's history, had either failed through an excessive spirit of local independence; or else where it had succeeded it had almost uniformly been attended by the decay of local freedom and autonomy. In ancient times the city-states of Greece had been followed by the all-embracing imperialism of Rome; in more modern times the petty sovereignties of feudal Europe had been absorbed by the autocratic monarchies of the sixteenth and seventeenth centuries. Although federalism, as a principle of normal political growth, may be considered as old as human society, its influence in the past had been continually overcome by disintegrating or centralizing forces, and hence the American system, established by the Constitution of 1787, had no existing counterpart in the Europe of the eighteenth century. It was not a consolidated state, like England or France; neither was it a mere confederation of states, like the Dutch or Swiss republics. It was a true federal state (*Bundesstaat*) in the most technical sense of that term.

The distinctive character and great significance of the United States in the world's history can hardly be understood without an appreciation of federalism itself as a

principle of political growth and organization. The circumstances which have attended the formation of some federal states have often tended to obscure the real nature of this principle. Because we are accustomed to think of the United States, for example, as originally formed by the aggregation of previously independent States, it is often supposed that a federal state can only be one which has grown up through the process of aggregation, that it can come into being only by the delegation of certain powers on the part of the constituent communities which have united for that special purpose. But the federal republics of Mexico and Brazil and the federal system of Canada, have been formed not by such a process of aggregation, but by the reverse process of segregation and decentralization. And it might even be said that all the States of the American Union, with the exception of the original thirteen, have become parts of the American federal system, not by delegating powers to the central government, but by receiving from the central government powers similar to those possessed by the original thirteen. The powers of the constituent States thus mentioned are not intrinsic and original, but extrinsic and derived. But no one would deny that the constituent States of Mexico and Brazil, and the thirty-one new States of the American Union are as truly parts of a federal system as though they had once actually possessed the character of independent and sovereign communities. Moreover, the advocacy by eminent statesmen of the "federalization" of the British Empire indicates the accepted belief that a federal system can be developed by the process of segregation, as well as of aggregation. The fact seems to be that the nature of a federal state does not depend so much upon its origin, as upon the peculiar distribution of political powers by which it is characterized.

The inchoate stages through which a loose confederation has sometimes passed in the development of a supreme federal government often makes it difficult to draw a clear line

of distinction between such a confederation and a true federal state. Professor Freeman, in his "History of Federal Government in Greece and Italy," has indicated the difficulty of separating the early stages of federalism from its complete and perfected form. But while this writer, in following out the scope of his work, has described many imperfect forms of the federal system, he has none the less given us a clear and intelligible description of what constitutes a true federal government. "Two requisites," he says, "seem necessary to constitute a federal government in its perfect form. On the one hand, each of the members of the union must be wholly independent in those matters which concern each member only. On the other hand, all must be subject to a common power in those matters which concern the whole body of members collectively. Each member," he continues, "is perfectly independent within its own sphere; but there is a sphere in which its independence, or rather its separate existence, vanishes. It is invested with every right of sovereignty on one class of subjects; but there is another class of subjects on which it is as incapable of independent action as any province or city of a monarchy or an indivisible republic. . . . This complete division of sovereignty," he concludes, "we may look upon as essential to the absolute perfection of the federal ideal."*

While this last proposition of Professor Freeman is at variance with the theory generally accepted by political scientists, namely, that sovereignty is ultimate and indivisible, we may accept his general statement as fairly descriptive of the federal idea; and we may even reconcile his view with the scientific theory of sovereignty by saying that, while the sovereign authority of a state is the ultimate and indivisible source of all political powers, these powers themselves may be divided and distributed, certain powers being exercised independently by a central government, and certain other powers being exercised equally independently by the

* "History of Federal Government in Greece and Italy." Ed. 1893, pp. 2 and 3.

constituent members of the body-politic. The essential idea of federalism seems to be that of duality, or the co-ordination of two separate systems of government, each independent within its own sphere, but both dependent upon a fundamental law which defines the boundary line between these spheres of independent action. This is true whether, as in some federal systems, the central powers are delegated and the local powers residuary; or, as in other systems, the local powers are delegated and the central powers residuary.

The principle of duality may, it is true, apply merely to the government, and not to the whole body-politic—including the rights and duties of citizenship. In such a case it may be said that there is no federal *state* in the proper sense, but only a system of federated governments; the central government, in exercising its authority or in making its requisitions, comes into relation with the constituent governments only, and has no direct relation with the citizens themselves. But a "state," in the proper sense, is something more than a government. It comprehends the whole body-politic. It is the entire political organism, composed alike of a system of government and a community of citizens. A perfect "federal state" must therefore possess not only a dual government, but also a dual citizenship. Not only is the exercise of authority on the part of the government divided and co-ordinated, but also the possession of rights and duties on the part of the citizen is similarly divided and co-ordinated. Each government, whether central or constituent, exercises within its own sphere an independent and direct authority over every citizen, and in turn every citizen possesses distinct spheres of rights and duties sanctioned and enforced by each government. This duality, both of government and citizenship, evidently marks the highest conception of the federal state. And it is this conception of federalism which has found its largest and most complete expression in the organic structure of the American Union.

In reading the records of the Constitutional Convention

of 1787 we find that the great difficulties which attended the formation of the Federal Constitution were not so much those which related to the mere forms of the central government, as those which related to the basis of that government and to the relative status of the constituent communities. The real problem before the convention, whether consciously perceived or not, was not simply to form a federal *government*, but what was far more refined and difficult, to construct a true federal *state*—a body-politic in which the principle of duality should apply not only to the exercise of legislative, executive and judicial powers, but also to the possession of rights and duties on the part of all those who should become subjects of the federated authority. While the model upon which the several branches of a new government could be constructed were clearly apparent in every American State, the principles which should enter into a completely federalized body-politic were not so conspicuously manifest. And it was only by a laborious sifting and careful adjustment of divergent notions that the peculiar ideas which characterize American federalism were finally brought to light in the Convention of 1787.

No one can, of course, claim that the principles of American federalism, any more than the particular forms of the central government, were created by that famous body of statesmen whom we sometimes reverently call the "Fathers." On the other hand no one can be justified in the belief that the American Union was a mere modification or outgrowth of any previous alliance which had existed between the colonies or States. No authoritative historian of the Constitution has ever entertained the superficial view that that document was a mere variation of the Articles of Confederation. It is certain that those who participated in its formation never had such a view. Its opponents objected to it for the very reason that it was essentially and radically different from the previous Articles. And its advocates supported it and adopted it because they believed that the existing

Articles were utterly inadequate to express the political ideas and to meet the political needs of the American people. The new political system was a modification neither of the Confederation of 1781, nor of the Albany Union of 1754, nor of the New England Confederacy of 1643. These superficial alliances served, it is true, to bring the colonies and States into more amicable relations, by which they could aid each other against their common foes. But none of them contained the essential and distinctive features of that composite state-system which was established by the Constitution of 1787. We must search deeper into American political life, and perhaps into the common political life of our Teutonic, and even our Aryan ancestors to find the true historical sources of American federalism.

That the germs of a true federal state already existed in the political institutions of America, although not embodied in the Articles of Confederation or in any previous alliance of a similar nature, is a fact which is susceptible of the clearest proof. That these federative principles determined to a large extent the internal growth and structure of the early colonies, especially those of New England, is also a proposition which can be readily demonstrated. Moreover, it can be shown that these peculiar federative features, which marked the structure of many American colonies, were not derived from any contemporary institutions of Europe, but were rather the outgrowth of fundamental race instincts which had survived the general wreck of political liberty on the Continent and in England—instincts which had in fact given birth to the primitive European state, which had in ancient times presided over the genesis of political institutions in Greece and in Italy, as well as in the Teutonic world, both in Germany and in Anglo-Saxon England, but which had been suppressed by centuries of centralization, and were again brought into consciousness and efficient activity only with the throes of the Puritan Revolution, a revolt against centralized authority which reached its most

logical outcome, not in England, but on the shores of the New World.

It will, of course, be impossible within the limits of this paper to illustrate in an adequate way the line of historical continuity suggested by these propositions. Every student of institutional history must be impressed with the importance of federalism as a principle of political organization in the early stages of human society. The natural and almost spontaneous way in which the early integrations of society were effected by the differentiation and coalescence of elementary groups and the well-nigh universal tendency in the early period to blend a qualified local independence with a qualified central authority seem to show that federalism is in some sense a normal principle in the growth and organization of political society. The greatest English authority upon early federalism, Professor Freeman, in studying the ancient Greek confederations of cities, which culminated in the Achaian League, was convinced that some form of federalism existed in Greece even before the formation of cities.* Dr. Arnold, from his researches into the early history of the Italian communities, was led to make a more general statement, to the effect that "the system of federation existed everywhere in the early state of society."†

The comparative study of Greek, Roman and Teutonic society enables us to see why the early Greek and Italian cities, as well as the ancient German tribes, were but the result of a normal federative process which had been going on from the earliest times. We see that the largest political group which presents itself at the beginning of the historical period, whether the Greek city, the Italian hill-town, or the Teutonic tribe, resulted from the federation of smaller groups, namely, the Greek *phratry*, the Italian *curia*, the Teutonic hundred. We also see that these groups in turn were made up of still smaller groups, namely, the Greek

* "History of Federal Government," p. 112.

† "Arnold's Life," Vol. i, p. 273, quoted by Freeman.

genos, the Italian *gens*, the Teutonic mark or village community. And finally we observe that these in their turn were composed of a number of kindred or neighboring households. The earliest European society is thus presented to us as made up of a series of concentric circles of social and political life. The household, under the power of the father, was the integral unit of the social organism. A union of households, joined either by kindred or vicinage, constituted the *gens* or village community, under the control of its head-man, its council or village assembly. In each succeeding stage of federation, the higher group assumed only the power necessary to control the interests which were common to the constituent communities, while the lower groups retained their control over matters which were purely local. Every person was thus subject to the authority of every group, whether lower or higher, within the sphere of its graduated authority. By such a continuous process of federation, when uninterrupted by abnormal conditions, was finally formed the typical Greek city, the Italian hill-town and the Teutonic tribe.

But even at an early period of European history these political societies were beginning to integrate into larger confederations; for example, the leagues of Phocis, of Bœotia, of Ætolia, of Achaia in Greece; the leagues of Etruria, of Samnium, of Latium in Italy; the confederations of the Franks, of the Saxons, of the Allemanni among the Germans. Of all these confederations, that of Achaia approached most closely to a true federal state. Each constituent government in the Achaian League was independent within its own sphere. The central government took charge of general interests, and was composed of a federal assembly, a federal senate, a federal president, and a body of magistrates which formed a sort of federal cabinet. Each citizen was responsible alike to the government of his own city and to that of the federal union. So closely did the Achaian League approach the character of a true federal state, that

Professor Freeman even broaches the question whether it did not form a conscious model for the American Union; but he gives sufficient reasons for dismissing such a hypothesis as altogether without foundation.*

The federative tendencies which had attained such a brilliant result in the Achaian League were neutralized by the extreme localism which prevailed in other parts of Greece, and were finally overpowered and rendered impotent by the Macedonian and Roman conquests. In a different way, but with similar results, the federative tendencies which in early times prevailed in Italy, were overcome and finally destroyed by the centralizing policy of the Imperial City.

Of the three great branches of the Aryan race in early Europe—the Greeks, the Italians and the Germans—it was the Germans who possessed a federative system which promised the most favorable results. Having no established cities around which clustered the traditions of local sovereignty, and not placed under the shadow of an autocratic imperialism, they were apparently threatened by none of the influences which had destroyed federalism in Greece and Rome. Before their migration to Britain in the fifth century, the Germans had developed the mark, the hundred, and the tribe, which were concentric areas of social and political life, and which presented in outline the gradations of local independence and central authority.

When transplanted to England this federative system of the Germans appeared in a more definite form. The Anglo-Saxon township, like the German mark, the Italian *gens* and the Greek *genos*, was the primary unit of political society. Within its own sphere it was a miniature republic, governed by its own assembly or town-meeting (*tun-gemote*), electing its own chief magistrate (*tun-reeve*), and exercising exclusive authority over its own local affairs. A federation of Anglo-Saxon townships constituted the hundred. This group also possessed its own elected chief (*hundred-reeve*),

* Freeman's "Federal Government," p. 249.

with a representative assembly (*hundred-gemote*), composed of the head-man and four chosen men of each township. It exercised jurisdiction over matters which were of common interest to the several towns of which it was composed. A federation of hundreds constituted the early Anglo-Saxon tribe, kingdom, or what afterward corresponded to the shire. The shire may, in fact, be regarded as the highest form of the early Anglo-Saxon state. It possessed a general assembly (*shire-mote*) made up of all freeholders, together with a representative element, comprising, like the hundred-court, the head-man and four chosen men from each town of the shire. It originally elected its own chief magistrate, the earldorman, and its own judicial executive, the sheriff (*shire-reeve*), and exercised an authority over the general affairs of the whole shire, whether legislative, executive or judicial. Without going further into details, regarding what is well known to every student of institutional history, it may be said in general that the earliest institutions of England presented the same features of a federative system, with its graduated adjustment of local independence and central authority which seems everywhere to have prevailed in early European society.*

No more than in Greece and Italy, did the germs of federalism ever reach their full development in England. With the consolidation which attended the growth of the later Anglo-Saxon kingdom, and during the long period of centralization which followed the Norman Conquest, the different areas of local self-government gradually lost their importance as centres of independent political life. In the first place the shire or county lost its character as a self-governing community. The power of electing the sheriff was taken away from the freeholders; the earldorman was superseded by the lord-lieutenant, who was appointed by the

* Stubb's "Constitutional History of England," Cap. 5; P. V. Smith's "History of English Institutions," p. 64, et seq.; Freeman's "Comparative Politics," p. 115, et seq.; Coulanges's "Ancient City," Book 3, Cap. 1.; Hearn's "Aryan Household," Cap. 14, "The State."

Crown; and in the meantime the shire assembly acquired the character of a judicial court under the control of the king's officers. Although the county became a seat of Parliamentary elections, its chief character was that of a mere administrative district of the central government. In the next place, the hundred early lost its independent character; its assembly soon passed out of sight, and its previous judicial functions were transferred to the county court. Finally, the township itself was so transformed as to lose the distinctive and independent civil organization which it originally possessed. Its political and ecclesiastical life was, it is true, continued to a certain extent in the manor and the parish, but neither of these institutions preserved the local independence and the self-governing features of the ancient township. On the one hand, the court of the manor, while retaining the freeholders as its suitors, passed under the control of the feudal lord; and the custom of removing all causes from this court to the justices on circuit, caused its jurisdiction gradually to fall into disuse.* On the other hand, the vestry of the parish, while preserving some of the appearance of the old town-meeting, was modified by the introduction of the "select vestry," which was practically a self-elected and close corporation.† The parish, indeed, on its civil side, became scarcely more than a district for the collection of the rates and the administration of the poor laws.

The principles of local self-government, and the inchoate forms of federalism which England had anciently inherited from the Teutonic, and more remotely from the Aryan race, were practically suppressed by the methods indicated. Even the growth of representation did not neutralize this tendency toward the decay of local autonomy; and the chartered rights of the boroughs, which, for a time, promised local liberty to the municipal population, were greatly

* P. V. Smith's "English Institutions," p. 80.

† *Ibid.*, p. 95.

restricted by the encroachments of the nobility and the Crown.* By the beginning of the seventeenth century it may be said that local self-government, in the proper sense of that phrase, had disappeared from England. Even the words "local government" came to mean not local *self*-government, that is the independent government of localities by the localities themselves, but the government of localities by the central authority,—sometimes, it is true, through administrative officers elected by the districts. The distribution of real political power between larger and smaller areas, such as characterized the early Anglo-Saxon system, no longer existed. All the chief elements of local authority had been gathered up into the central government and finally into the hands of the king, so that under the Tudors and the early Stuarts the government of England was more nearly assimilated to the autocratic imperialism of Rome than to the democratic and federal institutions of early Europe.

But though the principles of the early Anglo-Saxon system formed no essential part of the English monarchy under James I. and Charles I., the spirit of Anglo-Saxon freedom still existed in the hearts of the English commonalty. It boldly reasserted itself in the Puritan Revolution, and while a part of its adherents painfully struggled for recognition in the land of its nativity, another part sought for a more peaceful refuge on the shores of the New World. The Puritan Revolution is relevant to our present discussion only as it was a reaction against the centralized monarchy of England, and as it opened a new field for the revival of those normal principles of local freedom and federative growth which had presided over the first definite organization of European society, but which had been successively overcome in Greece by disintegration and conquest, in Rome by imperialization and in Britain by the centralizing tendencies of the Crown. Moved by the spirit of political and

* *Ibid.*, pp. 88 and 89.

ecclesiastical independence the Puritan refugees sought to break away from the political system of the Old World, with its extreme tendencies to centralization in church and state. Even the small band which fled to Holland found in that land of commingled freedom and feudalism no congenial home, and became, in fact, the pioneers of the Puritan migration to the New World. The reappearance of democratic and federal institutions in the Puritan colonies of this country is a significant fact in universal as well as in American history. In the wilds of New England it would not be an exaggeration to say that European society had a new birth.

In looking at the federative system which grew up in the New England colonies, and which afterward became incorporated in the Federal Union of 1787, it is worthy of remark that it was patterned after no existing model, and that it was established by no law outside of the colonies themselves. Though the central government of the colony can be distinctly traced to the chartered forms of the trading company, yet the growth of local self-government in the constituent towns of the colony, and the adjustment of the government of these towns to the central government of the colony, were as foreign to the forms of a trading company as they were to the contemporary institutions of England and of Continental Europe. In fact, the distribution of political powers between co-ordinate governments—a system which sprang up in Plymouth, Massachusetts Bay, Connecticut and Rhode Island—had no existing counterpart in the countries of the civilized world. It can be historically explained only as the instinctive reproduction of primitive institutions under the influence of a primitive environment.

The progressive steps by which this system became established in the different colonies illustrates the different ways in which a federal organization may come into existence. If we clearly distinguish between the central government of the colony and the constituent governments of the towns,

and trace the genesis of each, we can see that the growth of a federal system does not necessarily proceed according to a uniform method. It may, for example, arise by the integration of previously existing communities into a larger political society, or it may arise by the segregation of an existing community into distinct and constituent parts. In some cases in New England, in one at least, the government of the town preceded that of the colony; in other cases the government of the colony preceded that of the town. It has often been said by those who have investigated the early institutions of New England, and reiterated by those who have not; that the town was the integral unit of New England society. If by this statement it is meant that the organization of the town necessarily preceded that of the colony, and that the colony was in all cases merely an aggregation of previously organized towns, the statement is far from being true.

In Plymouth the central government of the colony, with its governor, assistants, and general court, was developed before the outlying towns were even settled. And when the new settlements were first made, the inhabitants still remained, for a time, a homogeneous part of the Plymouth community. It was not until sixteen years after the founding of the Plymouth colony that the first towns of Scituate and Duxbury were recognized as having any distinct organization or powers.* The new communities gradually acquired, or rather assumed, independent powers over their own local affairs, which independent powers were recognized by the colonial government in 1639. The general liberties granted to the towns of Plymouth are indicated by the two laws of 1639. The first of these provided "That all the Townships within this government, allowed or to be allowed, shall have liberty to meete together and to make such Towne orders as shal be needfull and requisite for the hearing of cattell and doing such other things as shal be needfull for

* Plymouth Records, Vol. i, pp. 44 and 62.

the maynetenance of good neighbourhood and to set penalties upon delinquents, Provided that their orders be not repugnant nor infringing any publicke act.”* By the second law it was enacted “That every Towneship shal have liberty to meete together and make levyes, rates & taxes for their townes charges & to distrain such as refuse to pay the same upon warrant from the Court or Governor.”† The mode in which the towns should exercise these powers was left to the towns themselves. The town meeting was, like the Anglo-Saxon *tun-gemote*, a primary assembly of all the freemen, who came gradually to depute their powers to certain chosen men, or select committees. It was not until 1665 that the board of “selectmen”—an institution which had already grown up in Massachusetts—was formally adopted in the Plymouth towns.‡ By the general process thus described there grew up in succession the central government of the colony and the separate governments of the constituent towns. Each of these governments, central and constituent, was distinct in form and functions. The central government of the colony was made up of a governor, a council of assistants, and a general court or assembly, and it exercised a general authority over the common interests of the whole community. The town government was made up of a town meeting, or primary assembly, and a body of officers selected by the freemen of the town, and it exercised an authority over the local affairs of the town. This distribution of political powers between two sets of governments, sanctioned by general organic laws passed by the whole community, gave to the Plymouth colony the essential features of a federal republic.

In Massachusetts Bay, the growth of the federative system

* *Ibid.*, Vol. xi, p. 32.

† *Ibid.*, p. 36.

‡ Although the colony of Plymouth was founded before that of Massachusetts it was in the latter colony that the local institutions were first differentiated, and became adopted by the other colonies. “The institution of towns, with their government of selectmen, had its origin in Massachusetts, and was borrowed thence by the other governments.”—Palfrey’s “New England,” Vol. ii, p. 12.

was similar to that of Plymouth, in that the organization of the central government preceded that of the towns. But while the central government of the Plymouth colony was not established all at once, but grew up gradually, the central government of the Massachusetts colony was established immediately by the charter of the Massachusetts Bay Company—or more correctly, the government which the charter established for the company, with its governor, deputy-governor, assistants, and general court, was transferred bodily from England to Massachusetts, and became itself the central government of the colony.

But the distinct organization of the towns, with their town-meetings and selectmen, was in Massachusetts as in Plymouth the result of a gradual process of growth. After the great migration of 1630 the population of the colony was scattered among nine or more plantations or settlements. But these plantations were not at first "towns" in any political or legal sense. Their inhabitants formed a homogeneous community directly under the colonial government. When in 1631 the government of the colony was temporarily entrusted to the governor and the magistrates, the people of the plantations were obliged for the most part to shift for themselves. Each company of settlers, either by common action or through selected committees, assumed supervision over their own local affairs. They laid out their own lands, assigned them to occupants, admitted new persons to the settlements, and passed whatever orders seemed necessary to regulate their own interests. The special kinds of administrative work to be done in the town came to be entrusted to special committees. For example, the very first order on the town records of Boston is the appointment (May 7, 1634) of a committee composed of John Winthrop and nine other persons "to lay out stones and logs near the landing place."* In 1635 a committee was appointed "to set prices upon all cattle, commodities, victuals, and laborers' and workmen's

* Quincy's "History of Boston," p. 3.

wages.'''* The early custom of entrusting special work to special committees, both by the colonial government and by the towns, is seen in the following excerpt from the Massachusetts Records of 1634, where it is ordered that nine persons (whose names are given) be authorized by the General Court "to set out the bounds of all towns not yet set out, or the difference between any towns, provided that the committees of these towns where the difference is, shall have no voice in that particular."†

The custom of appointing a special committee for each occasion was gradually displaced by the election of a standing committee of "prudent men" to supervise the general affairs of the town. This committee was at first designated in a great variety of ways, for example, as "persons chosen for the occasions of the town," as "overseers of the town concerns," as the "seven men" or the "nine men" according to their number, as the "chosen men of the town," as the "townsmen," as the "townsmen select," and finally as the "selectmen." The term "selectmen" does not appear on the town records of Boston until November, 1643, and then only incidentally; and it was not until 1645 that John Winthrop and nine others were formerly chosen under the name of "selectmen."‡ It seems quite evident that this famous institution of New England was at first nothing more than a standing committee which was selected by the town people to take charge of their affairs during the intervals of the town meetings. The nature, functions and origin of this official body are fully explained in the Rev. Richard Brown's Diary in which that divine says that "they were chosen from quarter to quarter by papers [ballots] to discharge the business of the town, in taking in or refusing any to come into town, as also to dispose of lands and lots, to make lawful orders, to impose fines on the breakers of orders, as also to levy and distrain them, and were fully empowered of

* *Ibid.*, p. 4.

† Massachusetts Records, Vol. i, p. 125.

‡ Quincy's "History of Boston," p. 3.

themselves to do what the town had power to do. The reason whereof was, the town judged it inconvenient and burdensome to be all called together on every occasion."* In this way the towns of Massachusetts gradually assumed the powers and adopted the methods necessary to manage their own local affairs. The central government of the colony did not, as a rule, interfere with matters which related exclusively to the towns-people, but exercised authority only over matters of general concern. It regulated the boundaries and disputes between the towns, punished the graver crimes, imposed general taxes, determined the conditions of the franchise, provided for the military defence, and supervised the external relations of the colony.

The recognition of the distinct and independent authority of the Massachusetts towns to govern themselves within the sphere of their own interests was formally expressed in a law passed by the General Court of the colony in 1636. As this is the first law of its kind enacted in New England, and as it was copied by other colonies it has a special significance. It reads as follows: "Whereas particular townes have many things which concerne themselves and the ordering of their owne affairs and disposing of businesses in their owne towne, it is therefore ordered that the ffreemen of every towne, or the major parte of them, shall onely [solely] have power to dispose of their lands & woods, with all the previledges & appurtenances of said townes, to graunt lotts & make such orders as may concerne the well ordering of their own townes, not repugnant to the lawes and orders here established by the General Court; as also to lay mulks and penaltyes for the breach of their orders & to lay & distreine the same not exceeding the some of xxs; also to choose their owne particular officers, as constables, surveyors of the highways, and the like."† This law gave a definite sanction to customs already existing; and when we remember that it

* Quoted in Coffin's "History of Newbury," p. 19.

† Massachusetts Records, 1635-36, Mar. 3, Vol. i, p. 172.

was at the same General Court at which this law was passed, that the dissatisfied towns of Dorchester, Newtown, and Watertown obtained their permission to settle in Connecticut, it is evident that the law was intended quite as much to limit the powers of the central government as it was to define the powers of the town governments. In fact, it defined the sphere of local independence within which the central government could not legally interfere. Moreover, the Massachusetts law of 1636 was not a mere act of incorporation. It possessed the character of a constitutional enactment, so far as such a law was possible at the time. It was a general act, passed by the supreme authority within the colony—discounting the king. It defined the sphere of the constituent governments in their relation to the central government, and thus secured the right of local autonomy within the towns. This law was, furthermore, re-enacted in the "Body of Liberties" in 1641, which gave to it, in the qualified sense just indicated, a more definite character as a constitutional provision.*

The colony of Massachusetts thus acquired the character of a federal republic, with the distribution of powers between the central government of the whole colony and the governments of the constituent communities which is essential to it. Each government, whether central or constituent, had not only its own sphere of customary authority, but its own distinct form of organization. The town was, in short, a body-politic, having a qualified independence, and exercising its authority through an assembly of its own freemen and

* The "Body of Liberties," which was compiled by Mr. Nathaniel Ward from the existing laws in force in the colony, was approved by the General Court, December 10, 1641. The provision relating to towns appeared in the following form: "The Freemen of every Township shall have power to make such by laws and constitutions as may concerne the welfare of their Towne, provided they be not of a Criminall, but only of a prudentiall nature, And that their penalties exceeede not 20 sh for one offence, And that they be not repugnant to the publique laws and orders of the Countrey. And if any Inhabitant shall neglect or refuse to observe them, they shall have power to levy the appointed penalties by distresse."—"The Colonial Laws of Massachusetts, reprinted from the edition of 1660," etc., Ed. by Wm. H. Whitmore, Boston, 1889, p. 47.

through officers of its own choice. The central or federal government of the colony was based partly upon the people and partly upon the towns as integral elements of the colony. The governor, deputy-governor and assistants, which soon constituted the "upper house" were chosen by a general election of the whole body of freemen, while the deputies, who soon constituted the "lower house," were chosen by an equal representation from the several towns.

This political system was not, technically speaking, a mere system of federated governments. On the contrary, each citizen was responsible to the central government of the colony, as well as the government of his own town. The principle of duality applied not only to the distribution of political powers, but also to the exercise of rights and duties on the part of the citizen. The entire body-politic was thus organized on a true federal basis. This form of federalism in Massachusetts continued substantially throughout the whole colonial period, and it is perhaps worthy of remark that no provisions were made in the first constitution of the State abridging the rights of local self-government already possessed by the towns.

The growth of the federative system in Connecticut was closely akin to that in Massachusetts. The year in which the people of Dorchester, Newtown and Watertown emigrated to the Connecticut River was the year in which the General Court of Massachusetts had recognized the liberties of all the towns of that colony. In planting their new settlements, the people of Connecticut continued to be jealous of the principle of local independence. In connection with the study of the political system of this colony, the question has arisen whether the towns were definitely organized before the central government of the colony was established,* or whether the central government was organized before that of the towns.† This question, however, is not very relevant

* For this view, see Johnston's "Connecticut," pp. 61 and 62.

† This view is plausibly defended by Charles M. Andrews in the "Beginnings of the Connecticut Towns," *ANNALS*, Vol. i, p. 165, Oct., 1890.

to our discussion, if, as we have shown, a federal system can come into existence as the result either of aggregation or of segregation. The fact seems to be that some form of town organization in Winsor, Hartford and Wethersfield, and some form of common government over these towns co-existed from their first settlement on the Connecticut River. The inhabitants of these towns had already formed a considerable portion of the previous towns of Dorchester, Newtown and Watertown, in Massachusetts, where they had insisted upon their rights of self-government; and in the absence of records to the contrary, we may reasonably suppose that they continued from 1636 to 1639 to act in their new settlements, as they had claimed the right to do in their previous homes. Moreover, the records of the General Court of the colony of Connecticut, which begin with the year 1636, contain no statement indicating that the central government—which was at first authorized by a commission from Massachusetts, but which was in a year entirely assumed by the Connecticut people—interfered at all with the local affairs of the towns. For example, the colonial government laid out the boundaries between the towns, but did not distribute the lands within the towns.* And in the Pequod war the requisitions were laid upon the towns as separate political entities, and not upon the individual inhabitants.†

By the Constitution of 1639 the central government of Connecticut became definitely organized, being modeled in general on the Massachusetts system. The governor and magistrates were chosen at a general election by the whole body of freemen, and the deputies were elected by equal representation from the several towns. The preamble of the Connecticut Constitution of 1639 declares "that we the Inhabitants of Winsor, Harteford and Wethersfield . . . doe assotiate and conjoyne our selues to be one Public State

* Connecticut Records, Vol. i, pp. 7 and 8.

† *Ibid.*, p. 9, et seq.

or Commonwealth; and doe for our selues and our successors and such as shall be adjoynd to vs att any tyme hereafter, enter into Combination and Confederation together to mayntayne and preseatue the liberty and purity of the gospell . . . as also in our Ciuill affairs to be guided and gouerned according to such Lawes, Rules, Orders and decrees as shall be made, ordered & decreed as followeth," that is, in the manner prescribed in the subsequent articles.* In October, 1639, the General Court made a formal recognition of the liberties of the towns which they had evidently possessed from the first. This law reads as follows: "The Townes of Hartford, Winsore and Wethersfield, or any other of the Townes within this jurisdiction, shall each of them haue power to dispose of their owne lands undisposed of, and all other commodities arising out of their owne lymitts bounded out by the Court, the libertyes of the great River excepted, as also to choose their owne officers, and make such orders as may be for the well ordering of their owne Townes, being not repugnant to any law here established.† Scarcely any reference is made in the records of the colony to the organization of the towns themselves. Not until 1650 is there any mention made of the "townsmen" as such,‡ and it was not until the revision of the laws in 1660 that the term "selectmen" was employed as a synonym for "townsmen." The extent to which the towns continued to be secured in their local independence is evident from the revised laws of 1672, which still provided that the inhabitants of every town should have power to make such orders, laws, rules and constitutions as concerned their own welfare.§

* For the text of the Constitution, see Connecticut Records, Vol. i, p, 20, and also Trumbull's "History of Connecticut," Vol. i, Appendix, p. 3.

† Connecticut Records, Vol. i, p. 36.

‡ *Ibid.*, p. 214.

§ The revised laws of 1662 contain the following enactment: "*Be it enacted by the Governour and Council and House of Representatives in General Court assembled, That the settled and approved inhabitants of every town in this State, qualified and having estate as is hereafter in this act provided, shall have power to make such orders, rules and constitutions as may concern the welfare of their towns.*"—Statutes of Connecticut, Ed. 1808, p. 649.

From these facts it is evident that in the colony of Connecticut there was a real distribution of political powers between the central government of the colony and the governments of the constituent communities, similar to that which had grown up in Massachusetts. By the later incorporation of New Haven with Connecticut this composite system, with all its federal features, became extended over the combined communities. The royal charter of 1662 recognized the existing organization of the central government, confirming the right of the freemen at large to choose their governor, deputy-governor and assistants by general election; also the right of equal representation to the several towns in their choice of the deputies to the General Court; and, moreover, it did not in any way detract from the rights of local freedom already possessed by the towns.*

In Rhode Island the process of federation was somewhat different from that pursued in the other colonies of New England. The colony of "Rhode Island and Providence Plantations" was in its completed form the result of an integration of the towns of Providence, Portsmouth, Newport and Warwick. Each of these towns, except Warwick, had been for some time previous to the union organized under its own independent government. The earliest official body in Providence was a committee of five men, called the "disposers," while in Portsmouth and Newport it was composed of a "judge" and three "elders;" in each case these officers were chosen directly by the people. There was no common authority of any sort exercised over these towns previous to 1640. In that year the two towns of Portsmouth and Newport, while retaining their local independence, first united in a common government, in which a governor and two assistants were chosen from one town, and a deputy-governor and two assistants were chosen from the other town.† The records show that this common

* Cf. Poore's "Charters and Constitutions," Vol. i, p. 253.

† Rhode Island Records, Vol. i, p. 100.

government did not interfere with the local affairs of either town, but took charge of those matters only which were of common interest.

The next step in the federation of the Rhode Island colony took place in 1647, when the common government was enlarged and modified so as to include Providence and Warwick. The three towns of Providence, Portsmouth and Newport had already received from Parliament in 1643 a "Free Charter of Incorporation and Government," that "they may order and govern their Plantations in such a Manner as to maintain Justice and peace, both among themselves and towards all men with whom they shall have to do Together with full Power and Authority to rule themselves, and such others as shall hereafter inhabit within any Part of Said Tract of land, by such a Form of Civil Government as by voluntary consent of all, or the greater Part of them, they shall find most suitable to their Estate and Condition."* The extent to which the spirit of local independence existed in Rhode Island is seen in the instructions which Providence issued to its committee which met with the committees of the other towns to organize the new government. "We desire," said the people of Providence, "to have full power and authority to transact all our home affairs, to try all manner of causes or cases, and to execute all manner of executions, entirely within ourselves, excepting such cases and executions as the colony will be pleased to reserve to general trials and executions. We desire to have full power and authority to choose, ordain, authorize, and confirm, all our particular town officers, and also, that the said officers shall be responsible unto our particular town, and there may be no intermixture of general and particular officers, but that all may know their bounds and limits."† In May, 1647, at a general assembly of all the freemen of the colony, the new central government which

* For this charter, see Rhode Island Records Vol. i, p. 145.

† *Ibid.*, p. 43.

was to exercise a supervision over the common interests of the four towns was constituted. The common government consisted of a "President;" four "Assistants," one from each town; a "General Court," made up of "committees" of six men, elected by each town; and a "General Court of Elections;" at which all freemen, either in person or by proxy, voted for the general officers of the colony. Each town retained its own local authority, and was governed by a committee of six men, otherwise called the "council of the town," chosen at the town-meeting.*

Of all the towns of Rhode Island, Providence seems to have been the most jealous of its local autonomy. To obtain an unquestionable guarantee against any possible encroachment by the central government, Providence, in 1649, petitioned the General Court of the colony for an act of incorporation. Taking as a model the charter of 1643, which the colony itself had obtained from Parliament, the colonial assembly granted to Providence a similar charter, couched in similar terms, granting to the inhabitants of that town the full authority to govern themselves in all local matters. This charter is significant as being the first charter of incorporation, in the proper and legal sense, granted by any American colony to one of its constituent towns. It also indicates a very clear discrimination between local and central authorities. By it the general assembly granted and confirmed to "the free inhabitants of the towne of Providence a free and absolute charter of civill incorporation and government . . . together with full power and authoritie to governe themselves, and such others as shall hereafter inhabit within any part of the said Plantation, by such a form of civill government, as by voluntarie consent of all or the greater part of them, shall be found suitable unto their estate and condition . . . always reserving to the aforesaid Generall Assemblie power and authoritie so to dispose the

* For the proceedings of this Constituent Assembly, see Rhode Island Records, Vol. i, pp. 147-155.

generall governmente of that plantation as it stands in reference to the rest of the plantations, as they shall conceive from time to time, most conducing to the general good of the said plantations.''* Although no similar act of incorporation was granted to the other towns, it is evident from a perusal of the records that the rights guaranteed to Providence were recognized as belonging to them also; since no orders seem to have been enacted by the colonial government which interfered with the purely local interests of the several towns.

The royal charter granted to "Rhode Island and Providence Plantations" in 1663 was drawn by the same hand that drew the Connecticut charter of 1662, and the form of the central government of Rhode Island became assimilated to that of Connecticut, with its governor, deputy-governor, assistants and deputies. The phraseology of the Rhode Island charter of 1663 is almost identical with the Connecticut charter of 1662 in those parts which relate to the constitution of the colonial government. The number of assistants, however, which was authorized in Connecticut was twelve, while in Rhode Island it was ten. Also, in Connecticut the number of deputies was restricted to two from each town, while in Rhode Island six deputies were allowed to Newport and four to each of the other towns.† As in Connecticut, so in Rhode Island, there were no provisions which restricted the liberties already possessed by the towns. In each case there was the same distribution of general and special powers between the central government of the colony and the governments of the constituent communities.

These facts, it is believed, are sufficient to show that the political organization of the New England Colonies rested upon a true federal basis. The separation of powers between central and constituent governments was an essential and

* For a copy of this charter, see Rhode Island Records, Vol. i. p. 214.

† For the Rhode Island charter of 1663, see Rhode Island Records, Vol. ii, p. 3; also, "Charters and Constitutions," Vol. ii, p. 1595.

organic feature in the structure of every colony. The New England town, as it was organized during the colonial period, did not possess the character of a mere municipality with certain specified powers defined in an act of incorporation. With the exception of Providence no New England town received a charter of incorporation in the proper sense, and even the charter granted to Providence was really a charter of liberties, guaranteeing rights of self-government which had existed from the first. In the eyes of the colonists the authority of the town government within its own sphere was as essential to the organic structure of the colony as was the authority of the colonial government within its own sphere. A qualified local independence and a qualified central authority were everywhere interwoven as warp and woof into the political fabric. We thus see in the development of New England society during the seventeenth and eighteenth centuries a practical reproduction of those normal principles of federal growth which had presided over the earliest organization of European society, and which were now destined to survive and finally to work out political results in the New World which they were never permitted to attain in the Old.

It has been the purpose of this paper merely to show the beginnings of the federal system on American soil, and to suggest the historical principles upon which its origin must be explained. It would be instructive to contrast the relatively complete character of the federative system of New England with the relatively limited extent to which this system was developed in the other colonies. It would also be interesting to show how, in the establishment of the Federal Union of 1787, it was the New England system, represented chiefly by the statesmen of Connecticut and their supporters, which furnished the most decisive elements, not so much, perhaps, in the framing of the branches of the central government as in bringing about that adjustment between the Union as a whole, and the States as integral factors of that

Union which rendered the true federation of the American States possible. But these subjects lie beyond the limits of the present discussion. They suggest, however, the great importance of the federative system of New England, as presenting to us a sort of connecting link between the oldest and newest phases of political organization, between the institutional system of our Aryan ancestors and that synthesis of localism and centralism which seems to many to be the highest product of modern political evolution—the federal state.

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